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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/813,895

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David Benjamin Auerbach

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EXAMINER

ROBINSON, GRETA LEE

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/813,895	<b>Applicant(s)</b> AUERBACH ET AL.	
	<b>Examiner</b> Greta L. Robinson	<b>Art Unit</b> 2169	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 18-20 and 36-67 is/are pending in the application.
- 4a) Of the above claim(s) 1, 18, 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 3, 19, 20, 36, 37 and 40-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/11/09</u> .   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. Claims 1-3, 18-20 and 36-67 are pending in the present application.
2. Claim 36 has been amended. Claims 4-17 and 21-35 have status cancelled, and claims 1, 18, 38 and 39 have status withdrawn.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 2, 3, 19, 20, 36, 37, 40-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pingali et al. *Instantly Indexed Multimedia Databases of Real World*

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*Events* in view of Zakharov et al. US Patent Application Publication No. 2002/0059245

A1 and Kaler et al. US Patent 6,708,293 B2.

Regarding claim 36, Pingali et al. teaches a computer-implemented method for processing media files using a computer [Figure 1] comprising:

monitoring at least one application for occurrences of events wherein at least one event is associated with a media file [note: abstract “We introduce a new paradigm for real-time conversion of a real world event into a rich multimedia database by processing data from multiple sensors **observing events**. Real-time analysis ... instant indexing of multimedia data at capture time”; page 269 introduction “**real-time or online indexing**, as well as **capture** of data and indices that support a **user’s domain-specific queries**; note tracking page 271-274 section V];

capturing the at least one event upon the occurrence of the event by queuing event data associated with the event at a position in a queue [note: abstract “We introduce a new paradigm for real-time conversion of a real world event into a rich multimedia database by processing data from multiple sensors **observing events**. Real-time analysis ... instant indexing of multimedia data at capture time”; page 269 introduction “**real-time or online indexing**, as well as **capture** of data and indices that support a **user’s domain-specific queries**”];

indexing and storing at least some of the event data and articles associated with the event at a time after the occurrence of the event, wherein the time is based on performance data indicating a readiness to process the event and the position in the

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queue [note: page 275 note data selection section VI and page 279 activity map based indexing; user defines indexing criteria page 270-271 sections II-III];

receiving a search query [note: page 269 “real-time or online indexing, as well as capture of data and indices that support a user’s domain-specific queries”; Figure 2 ]; and

locating at least one relevant media file from the indexed and stored events relevant to the search query [note: Figure 2; page 270; page 269 left column paragraphs 3-4 system allows users to query a database and experience a live or archived tennis match in multiple forms]; and

outputting a result comprising at least one relevant media file [note: page 269; Figure 9].

Although Pingali et al. teaches the invention as cited, they do not explicitly teach that the time is based on performance data in a queue. Zakaharov et al. teaches a queue 122 used to monitor events through a file system monitoring application which provides variation in protocol [see: paragraph 0036 and abstract]. It would have been obvious to one of ordinary skill at the time of the invention to have combined Zakharov et al. with Pingali et al. because Zakharov et al. teaches hardware elements that would be used in Pingali’s system to monitor and capture events.

Zakharov et al. and Pingali do not explicitly state that the protocol is based on performance data. However, Kaler et al. teaches monitoring an application may include performance data [see: abstract; Figures 16-19; column 3 lines 1-48; column 15 lines 16-27 custom fields may be defined]. It would have been obvious to one of ordinary skill

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at the time of the invention to have combined the cited references since Pingali et al. teaches other domain specific information may be defined for indexing and retrieval of real-time events and data, and Zakharov et al. provides for variation in protocol. Kaler et al. teaches monitoring an application process encompasses monitoring performance.

5. Regarding claims 40-53, wherein the event comprises monitoring an application to determine the event data .... [note: Pingali et al. pages 270-271 tracking and analyzing activity and 279-281 ability to track dynamic activity and define parameters and/or sensors].

6. The limitations of claim 37 and 54-67 parallel claims 36 and 40-53; therefor it is rejected under the same rationale.

7. Regarding claims 2, 3, 19 and 20 wherein the query is an explicit query or implicit query, note Pingali et al. provides for query defining note defining indices for efficient retrieval page 270, Figure 1.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 2, 3, 19, 20, 36, 37 and 40-67 have been considered but are moot in view of the new ground(s) of rejection. Applicant argued in the response that the prior art did not teach a queue for queuing the event data, note newly cited reference Zakharov et al..

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (571)272-4118. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tony Mahmoudi can be reached on (571)272-4078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greta L. Robinson/  
Primary Examiner, Art Unit 2169  
July 30, 2009